SUPREME COURT, U. S.

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E. ROBERT SEAVER, CLERK

No. 71-635

In the Supreme Court of the United States

OCTOBER TERM, 1971

ROBERT T. STEAD, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
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On the basis of findings that petitioner willfully violated the federal securities laws while he was a securities salesman and trader for a broker-dealer firm, the Securities and Exchange Commission entered an order barring petitioner from being associated with any broker or dealer, except that he could become associated with a broker or dealer after three months upon a showing that he would be adequately supervised (Pet. App. A1-14). The court of appeals affirmed (Pet. App. A18-22).

Petitioner's only contention is that the Commission improperly relied upon unproved allegations made against him in another proceeding as a basis for imposing the sanction in the instant proceeding without affording him an opportunity to rebut those allegations.

Contrary to petitioner's contention, the Commission did not base the sanction imposed upon petitioner upon allegations made in another proceeding. Although the Commission did refer in its opinion in the present case to another proceeding instituted against petitioner, it did so only in response to an argument made by petitioner. In a brief filed in June 1969 with the Commission in the present case, petitioner claimed that he had "been engaged in the brokerage business for fifteen years without complaint, censure or sanction."[1] In its opinion, the Commission simply observed that a complaint had been made against him, since the Commission had instituted another broker-dealer proceeding against petitioner in April 1969 charging him with federal securities law violations (Pet. App. A10-12).[2]

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[1] See page 71 of the joint appendix filed in the court of appeals.

[2] In seeking rehearing before the Commission, petitioner asserted that neither he nor the new broker-dealer firm with which he was then connected had been named by the Commission in any proceeding involving activities alleged to have occurred after the formation of his firm in November 1968. In commenting upon this assertion in its opinion and order denying rehearing, the Commission noted that the April 1969 proceeding referred to above charged willful violation of the registration provisions of the Securities Act from January to August 1968 (Pet. App. A15-16).

Since the Commission referred to the other proceeding only to show that a proceeding against petitioner had been instituted, the truthfulness of the allegations made in the other proceeding was not in issue in the present case; accordingly, there is no merit to petitioner's contention that he should have been given an opportunity to rebut those allegations.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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General Counsel,
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DECEMBER 1971.

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